

Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California

(Adopted by the Board of Governors on January 26, 1991; amended July 13, 1991; amended July 11, 1992; amended March 6, 1993; amended May 14, 1994; amended December 10, 1994; amended December 6, 1999.)

[Proposed Revisions Nov.18, 2002; deletions in strike out; additions in underline]

ARTICLE I. DEFINITIONS

RULE 1.0. Definitions.

As used in this chapter:

- 1.1** ~~**ARBITRATION PACKET:** Packet of materials including instructions, forms and information for requesting fee arbitration.~~
- 1.12** **ASSIGNEE:** A person to whom a claim, right or property is transferred. ~~Often, an attorney appoints a collection agency as an assignee for a particular debt.~~
- 1.23** **ASSISTANT PRESIDING ARBITRATOR:** The person to whom the Presiding Arbitrator has delegated duties or who acts in place of the Presiding Arbitrator when s/he or she is not available or is unable to perform the required duties.
- 1.34** ~~**ATTORNEY-CLIENT PRIVILEGE:** Confidential communications between lawyer and client which may be protected from disclosure.~~
- 1.35** **AWARD:** The ~~arbitrator's~~ decision of the arbitrator or arbitrators in the fee arbitration proceeding.
- 1.46** **CLIENT:** A person who directly or through an authorized representative consults, retains or secures legal services or advice from an attorney ~~lawyer~~ in the ~~lawyer's~~ attorney's professional capacity.
- 1.57** ~~**COMMITTEE ON MANDATORY FEE ARBITRATION:** The State Bar Standing C committee responsible for initial policy oversight of the State Bar Fee Arbitration Program.~~
- 1.58** **DIRECTOR:** The staff person responsible for administering the State Bar Mandatory Fee Arbitration Program.

1.69 DAYS: Days are all calendar days, not including legal holidays.

1.740 DECLARATION: A declaration is a document in compliance with the requirements of Code of Civil Procedure section 2015.5, or an affidavit.

1.844 FEE ARBITRATION DEPARTMENT: Panel of fee arbitrators appointed by the State Bar Board of Governors to hear State Bar fee arbitration cases.

1.9 FILE: State Bar fee arbitration records and papers in a specific fee arbitration or client's request for enforcement of award case.

1.10 HEARING PANEL: One or three arbitrators assigned to hear the fee dispute and to issue the award.

1.11 PANEL CHAIR: Refers to either the sole arbitrator or Panel Chair of a three-member panel assigned to hear a matter.

1.12 PARTY: is a person who requests arbitration of a fee dispute, including a client or other person who may be liable for, or entitled to, a refund of attorney's fees, or a person requesting enforcement of an award, a member who is the subject of a request for arbitration or request for enforcement

1.13 PRESIDING ARBITRATOR: The person responsible for supervising the fee arbitrators of hearing the State Bar m-Mandatory Ffee Aarbitration Department cases.

1.14 STATE BAR: is the State Bar of California. Unless indicated otherwise, reference to the State Bar means the State Bar's Office of Mandatory Fee Arbitration.

~~**1.15 WITH PREJUDICE:** An action taken that is final (e.g. dismissal i.e., no new request to arbitrate may be filed appeal right is available).~~

~~**1.16 WITHOUT PREJUDICE:** An action or order (e.g. dismissal) that does not forbid the party from beginning initiating the activity again (filing a new request for arbitration).~~

ARTICLE II. ARBITRATION GENERALLY

RULE 2.0. Arbitration Mandatory For Attorneys.

Arbitration under Business and Professions Code §§ sections 6200-6206 is voluntary for a client, unless the parties agreed in writing to submit their fee disputes to arbitration, and mandatory for an attorney if commenced by a client.

RULE 3.0. Attorney's Failure To Respond Or Participate.

If an attorney fails to respond to a request for arbitration or refuses to participate, the arbitration will proceed as scheduled and a decision will be made on the basis of the evidence presented to the hearing panel.

~~RULE 4.0. Notice of Client's Right to Arbitration.~~

~~Prior to or at the time of service of summons or claim in an action against the client for the recovery of fees, costs or both for professional services rendered, the attorney shall forward to serve on the client the approved State Bar form entitled "Notice of Client's Right to Arbitration." Failure to give this notice using the required State Bar form shall be a ground for dismissal of the action.~~

RULE 4.05.0. Disputes Covered.

Disputes concerning fees, costs, or both charged for professional services by an attorney are subject to arbitration under these rules, except for:

- ~~45.1~~ disputes where the attorney is ~~also~~ admitted to practice in another jurisdiction, or where the attorney is only admitted to practice in another jurisdiction, and ~~s/he~~ or she maintains no office in the State of California, and no material portion of the services ~~were~~ was rendered in the State of California;
- ~~45.2~~ ~~disputes where the client seeks~~ claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- ~~45.3~~ disputes where the fees and/or costs to be paid by the client or on the client's behalf have been determined or are determinable pursuant to statute or court order; or
- ~~45.4~~ disputes where the request for arbitration is made by a person who is not ~~the client of the attorney~~ liable for, or entitled to, a refund of attorney's fees or costs.

RULE ~~5~~6.0. Binding Arbitration.

- ~~56.1~~ Arbitration is not binding unless all parties agree in writing after the fee dispute arises. Such agreement shall be made prior to the taking of evidence at the hearing that it will be binding. If any party ~~does~~ has not agreed in writing to binding arbitration, the arbitration is non-binding, and any party may request a trial after arbitration in a civil court pursuant to Business and Professions Code section 6204 within ~~thirty (30)~~ days after the arbitration award has been ~~mailed~~ served. If a trial after arbitration is not requested, the award automatically becomes binding ~~thirty (30)~~ days after the award is ~~mailed~~ served, except that if any party willfully fails to appear at the hearing as provided for under these rules, that party shall not be entitled to a trial after arbitration. The decision as to whether the non-appearance was willful ~~will be~~ is made by the court. The party who failed to appear at the hearing shall have the burden of proving that the failure to appear was not willful.
- 5.2 If all parties agree in writing that the arbitration is binding, the award is binding and there can be no appeal in a civil court. A binding award may be corrected, vacated or confirmed pursuant to Code of Civil Procedure section 1285 *et seq.*
- ~~6.25.3~~ ~~At any time prior to the actual taking of evidence at the hearing, the parties may agree in writing to be bound by the award.~~ After all parties have agreed in writing to be bound by an arbitration award, a party may not withdraw from that agreement.

RULE ~~6-7.0~~. Right To Counsel.

~~Either~~ All parties ~~at his/her~~ at their own expense, may be represented by an attorney.

RULE ~~78.0~~. Waiver Of Right To Request Or Maintain Arbitration.

A client's right to request or maintain arbitration is waived if the client:

- ~~8 7.1~~ answers a complaint in a civil action or other equivalent response to the civil action before filing a request for arbitration, if after the required form entitled "Notice of Client's Right to Arbitration" a notice of the right to arbitration was given pursuant to Business & Professions Code section 6201(a) rule 4.0;
- ~~87.2~~ commences an action or files any pleading seeking judicial resolution of a fee and/or cost dispute or seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct;
- ~~8.3~~ ~~fails to send to the State Bar a written request for arbitration that is postmarked on or before the 30th day from receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Rule 4.0; or~~
- ~~87.43~~ fails to ~~send~~ deliver to the State Bar a request for arbitration on the approved State Bar form that is:

- a) ~~postmarked within fifteen (15) days from the date of the letter from the State Bar mailing the arbitration packet in response to a timely request by the client as defined by Rule 8.3 of these rules, or~~
- b) postmarked received on or before the thirtieth (30th) day from the date of the client's receipt of the form entitled "Notice of Client's Right to Arbitration" given pursuant to Business & Professions Code section 6201(a) Rule 4.0., whichever is later.

RULE ~~89.0~~ Stay Of Proceedings.

If an attorney, or the attorney's assignee, commences an action to collect fees and/or costs in any court, or other proceeding, ~~the client may seek to stay the action~~ court action or other proceeding is automatically stayed upon filing a request for fee arbitration with the State Bar, by filing a copy of a request for arbitration, on the approved State Bar form with the court, together with the The party who requested fee arbitration has a duty to notify the court of the stay and attach a copy of the arbitration request form, original form entitled "Notice That Action Has Been Stayed" and by complying with any such additional requirements as the court may direct.

ARTICLE III. STATE BAR PROGRAM

RULE ~~940.0~~ Presiding Arbitrator and Assistant Presiding Arbitrator; Representation of Parties.

- ~~40~~ 9.1 The Presiding Arbitrator supervises the arbitrators of the Fee Arbitration Department of the State Bar. ~~S/he~~ He or she is responsible for ruling on matters as set forth in these rules and shall be a member of the State Bar Committee on Mandatory Fee Arbitration. The Presiding Arbitrator may designate one or more Assistant Presiding Arbitrators from members of the Fee Arbitration Department who shall act in place of the Presiding Arbitrator if ~~s/he~~ he or she is absent, ~~or is unable to act, or has delegated his or her duties.~~
- ~~40~~ 9.2 Neither the Presiding Arbitrator, the Assistant Presiding Arbitrator(s), nor any member of the Committee on Mandatory Fee Arbitration shall represent any party in a matter arbitrated by the State Bar.

RULE ~~1044.0~~ Jurisdiction.

~~1044.1~~ The State Bar will accept a matter for arbitration if:

- a) there is no approved local bar association program with jurisdiction over the dispute; or
- b) upon the approval of the Presiding Arbitrator, subject to Rules ~~944.2~~ and ~~9~~ 44.3, a party seeks removal from a local bar association program and declares under

penalty of perjury that ~~s/he~~ the party cannot obtain a fair hearing in the local bar association program; or

46 c) prior to requesting arbitration with a local bar association program, a party asserts on the State Bar's Arbitration Request form that the party believes that he or she cannot obtain a fair hearing.

The State Bar will waive jurisdiction if there is an approved local bar association program that is willing to accept consensual jurisdiction and the parties consent in writing to submit to such jurisdiction.

1044.2 If a request for arbitration has been filed with the local bar and a party to the arbitration requests removal under subsection 10 H.1(b), above, ~~the request for removal shall not be granted unless:~~

~~———— a) the removing party postmarks the completed arbitration request on the approved State Bar form either: the party seeking removal from a local bar association program must submit a declaration signed under penalty of perjury asserting the factual basis for the removal. That party need not submit the filing fee to the State Bar until there has been a final ruling by the Presiding Arbitrator granting removal to the State Bar.~~

~~———— 1) ——— within fifteen (15) days after the State Bar's written decision concerning the request for removal has been mailed; or,~~

~~———— 2) ——— within fifteen (15) days after the State Bar has mailed the arbitration packet to the removing party, whichever is later; and~~

~~b) the removing party pays the State Bar's filing fee or secures a waiver of that fee; and The State Bar shall serve the request for removal and supporting declaration on the other parties and the local bar program. Any written responses must be received by the State Bar within 15 days of service of the request for removal and declaration for consideration by the Presiding Arbitrator. ———~~

~~c) ——— the State Bar shall determine that whether it has jurisdiction over the subject matter and the parties.~~

c) The removing party seeking removal must provide all additional information requested by the State Bar within the time limits set by the State Bar.

1044.3 The Presiding Arbitrator shall deny a request for removal if he or she determines that:

a) the other parties ~~to the local bar's arbitration~~, or the local bar itself, would be prejudiced by removal; and such prejudice outweighs the allegations by the removing party seeking removal ~~supporting the claim~~ that the party

believes that he or she cannot obtain a fair hearing through the local bar's program; or

b) ~~the removing party's participation in or~~ conduct of the party seeking removal during the course of the arbitration proceedings before the local bar is clearly inconsistent with a bona fide belief by ~~the responding party that the party~~ that he or she cannot obtain a fair hearing in that forum; or

c) the ~~removing party~~ seeking removal has waived any claim that the party cannot obtain a fair hearing before the local bar's arbitration program.

RULE ~~1112.0~~. Determination Of Jurisdiction.

11.1 The State Bar shall reject any request for arbitration when it is clear from the face of the request that the provisions of the State Bar Act, Article 13, have not been met.

11.2 The Presiding Arbitrator ~~may request that the parties submit written statements supporting their respective positions on the issue of whether the program has jurisdiction over their fee dispute.~~ For good cause, the Presiding Arbitrator may assign the matter to a hearing panel to take evidence and make a determination of whether jurisdiction should be accepted.

11.3 Within ~~fifteen (15)~~ days from ~~mailing~~ service of notice that jurisdiction has not been accepted, a party may file a written request for reconsideration. The Presiding Arbitrator shall rule on the request for reconsideration.

11.4 There is no appeal of the Presiding Arbitrator's decision following reconsideration of a hearing panel's determination.

RULE ~~1213.0~~. Venue.

A fee dispute will be heard in the county in ~~which the majority of the~~ substantial legal services that are the subject of the fee dispute were performed. For good cause shown, the Presiding Arbitrator may order that venue be moved to another county. A request for change of venue must be ~~mailed to~~ served on the State Bar 1) no later than ~~fifteen (15)~~ days after ~~mailing~~ filing of the request for arbitration; if ~~the request~~ change of venue is sought by the client, or 2) no later than ~~fifteen (15)~~ days after service of the request for arbitration, if ~~the request~~ change of venue is sought by the attorney. The order of the Presiding Arbitrator shall be final.

RULE 1314.0. Effect Of Failure to Adhere to Time Requirements.

The State Bar shall ~~not~~ neither lose jurisdiction, nor shall any arbitration be dismissed or any award invalidated or modified in any way, solely because of the State Bar's or the hearing panel's failure to comply with time requirements as set forth in these ~~R~~ rules.

ARTICLE IV. INITIATION OF ARBITRATION PROCEEDING

RULE ~~1415.0~~ Request For Arbitration.

~~1415.1~~ Arbitration is initiated by filing ~~with the State Bar of California~~ a written "Request For Arbitration" with the State Bar of California on the approved State Bar form and paying the appropriate filing fee as established by the State Bar. Service of the request on the ~~other party~~ attorney with whom there is a fee dispute named on the request form shall be made by the State Bar.

~~1415.2~~ At the time of service of ~~the~~ a request on the attorney, the State Bar shall ~~also~~ serve with it a copy of the approved State Bar "Notice of Attorney Responsibility" form.

~~1415.3~~ The party requesting arbitration may amend the request up to ~~fifteen~~ (15) days after mailing it to the State Bar, unless a request for clarification is made by the State Bar. Thereafter, it may be amended only with the approval of the Presiding Arbitrator or by the Panel Chair, if a notice of assignment of the hearing panel has been served on the parties.

~~1415.4~~ ~~For good cause shown,~~ The client may include, as a party to the arbitration, any person who is not the client of the attorney but who may be liable for or entitled to a refund of the attorney's fees and/or costs. The request for arbitration must be signed by the client and any other party who may be liable for or entitled to a refund of attorney's fees included by the client.

RULE ~~1516.0~~ Request For Filing Fee Waiver.

~~Each~~ A party seeking arbitration may file with the State Bar an application for a filing fee waiver on the approved State Bar form. A party to the arbitration who is not a client and who may be liable for or entitled to a refund of attorney's fees identified by the client as set forth in Rule 15.4, may be required to submit a financial statement regarding his or her own financial status to the State Bar to support the client's application for a filing fee waiver. If the party replies to the State Bar that he or she no longer has an interest in the outcome of the arbitration, the application will proceed based on the client's financial statement alone. For good cause shown, the Presiding Arbitrator may grant or deny the filing fee waiver or order a reduced fee. Filing fee waivers shall not be granted to business entities, including partnerships and corporations. The order of the Presiding Arbitrator shall be final.

RULE ~~1617.0~~ Attorney's Response To Request For Arbitration.

1617.1 The attorney's reply to a Request for Arbitration, together with any response to the issue of the attorney's responsibility for any award that refunds fees and/or costs to the client, shall be ~~filed~~ submitted to the State Bar within ~~thirty (30)~~ days of the service of the request, unless an extension of time to reply is obtained from ~~the Panel Chair or the Presiding Arbitrator if no panel has yet been appointed~~ or his or her designee.

1617.2 If the attorney seeks arbitration, and there is no written agreement between the parties that fee disputes be submitted to fee arbitration, arbitration shall proceed only if the client ~~files a written~~ consents in writing within ~~thirty (30)~~ days of service of the request, unless the attorney is seeking removal from a local bar program under rule 104.2 of a matter in which the client has already requested arbitration or has consented to an attorney's request for arbitration.

1617.3 ~~All~~ Consents by the client and Replies by the attorney to a request for arbitration shall be on the approved State Bar forms and ~~filed with~~ submitted to the State Bar.

RULE 1718.0. Return Of Original Documents: Requests and Responses to Requests for Arbitration.

~~Except upon order of the Presiding Arbitrator, immediately upon receipt of a request for arbitration, attorney's reply or other document submitted to the State Bar in connection with the arbitration proceeding, the State Bar shall remove and photocopy any attached original material. The originals shall be returned to the party who submitted them and copies attached to the document submitted.~~ Parties filing or responding to a Request for Arbitration shall file one original and four copies of all forms and supporting documentation with the State Bar if disputed amount is less than \$10,000 and six copies of all forms and supporting documents if the disputed amount is greater than \$10,000. Copies of materials filed with the State Bar will be forwarded to the opposing party and the hearing panel assigned to hear the matter.

RULE 1819.0. Settlement Of Disputes; Withdrawal From Arbitration; Refund Schedule.

1819.1 Upon confirmation by the parties or the hearing panel if one has been assigned that a dispute has been settled, the matter shall be dismissed by the State Bar in the absence of an assigned hearing panel, or by the panel if a notice of assignment of the hearing panel has been served on the parties.

1819.2 If the client wishes to withdraw from a binding arbitration and the matter has not been settled, all parties must agree to the matter being withdrawn. If the arbitration is non-binding, ~~or after reasonable confirmation that all agree to the withdrawal and for good cause shown, or there is no prior written agreement between the parties requiring fee arbitration, a request for~~

arbitration may be withdrawn by the party requesting arbitration and the matter shall be dismissed as set forth in subsection 1819.1 above.

1819.3 Refund of the filing fee: If the matter is settled or dismissed based on withdrawal before the request for arbitration is accepted for filing served on the attorney by the State Bar, ~~one-hundred~~ 100 percent (100%) of the filing fee shall be refunded to the party who paid it. ~~If the matter is settled after filing but before assignment~~ After the request for arbitration has been served on the attorney by the State Bar, but before assignment of a panel, the State Bar shall retain ~~fifty 50 percent (50%)~~ of the filing fee paid up to a maximum of ~~one-hundred 100~~ dollars (\$100). After assignment of a hearing panel, if written notice of the settlement is received by the State Bar at least ~~twenty-four (24)~~ hours by 10:00 a.m. one business day prior to the date of the scheduled hearing, the State Bar ~~will~~ shall retain ~~fifty 50 percent (50%)~~ of the filing fee up to a maximum of ~~five-hundred 500~~ dollars (\$500). The remaining fee shall be refunded to the party who paid it.

RULE 1920.0. Consolidations.

A party may request, in writing, that two or more arbitration matters be consolidated for hearing. The Program will serve the other party with a copy of the request. A written reply may be filed with the State Bar within 15 days of service of the request for consolidation. The Presiding Arbitrator shall rule on all written requests to consolidate. ~~two (2) or more separate arbitration requests.~~ The order of the Presiding Arbitrator shall be final.

ARTICLE V. PANELS

RULE 2024.0. Appointment Of Panel.

2024.1 For each dispute, the Director shall assign a hearing panel ~~shall be assigned by the Director~~ from the State Bar ~~pool of arbitrators~~ Fee Arbitration Department. A hearing panel shall consist of one ~~(1)~~ attorney arbitrator if the amount in dispute is ~~ten-thousand dollars (\$10,000.00)~~ or less and three ~~(3)~~ arbitrators if the amount in dispute is more than ~~ten-thousand dollars (\$10,000.00)~~, one of ~~whom~~ the arbitrators shall be a ~~public (non-lawyer) member~~. An attorney arbitrator shall be designated as Panel Chair. If the amount in dispute is more than ~~ten-thousand dollars (\$10,000.00)~~, the parties may agree, in writing, to have the matter heard by a single attorney arbitrator. ~~Any vacancy, by way of disqualification or inability to serve, may be filled by the Director.~~

2024.2 Upon the client's request, the Director shall assign a sole arbitrator, or in the case of a three ~~(3)~~ person panel, one of the attorney arbitrators, whose area of practice is civil or criminal law. Any such designation made by the client shall be of an arbitrator who practices in the same area of law as was involved in the matter for which the attorney was retained by the client. If

Such a request made pursuant to Business & Professions Code section 6200(e) must be submitted by the client at the time the written "Request for Arbitration" on the approved State Bar form is submitted to the State Bar.

2021.3 If a fee dispute involves ~~five hundred dollars (\$500)~~ \$1,000 or less, the arbitration shall be decided by the Presiding Arbitrator, or in his or her discretion, an Assistant Presiding Arbitrator. Each party shall submit all supporting documents and a complete written statement of the reasons for the dispute, and/or response under penalty of perjury. ~~the client shall do so at the time of the submission of the request or consent to arbitrate, the attorney at the time of the response or request to arbitrate.~~ Each party will have thirty (30) days from the date of service of the initial statement or response to reply. The parties have 30 days from the service by the State Bar of the reply to the arbitration request, which will be reflected in a proof of service mailed to the parties, to submit their supporting documentation to the program. The record shall thereafter be forwarded to the Presiding Arbitrator or Assistant Presiding Arbitrator for action, who may require either or both parties to submit additional information within 30 days. However, if the amount in controversy is less than \$1,000 but greater than \$500.00, the parties upon the request of any party, may appear at a hearing, either in person or telephonically, before the Presiding Arbitrator or Assistant Presiding Arbitrator assigned to the matter in addition to providing the written information required by this section. The State Bar shall keep a permanent record of the number of fee disputes in which the amount in controversy is between \$500.00 and \$1,000 and of that number, the number of fee disputes in which any party requested a hearing. The client parties shall be informed of this rule at the time of the State Bar's mailing to the client service of a completed-of-the-arbitration request form. packet.

20.4 Any vacancy of an arbitrator, by way of disqualification or inability to serve, may be filled by the Director, but in no event shall the arbitration proceed with only two arbitrators.

RULE 2122.0. Notice of Appointment Of Panel.

A notice identifying the arbitrator(s) who will hear the dispute shall be served on the parties within ~~sixty (60) days~~ of the date on which the reply to the arbitration request is received, or as soon thereafter as is reasonably possible. after the completed arbitration request, including the filing fee or order granting a request for waiver of fee, and response have been received. If no ~~reply response~~ is received, ~~said~~ the notice of appointment of panel will be served within ~~sixty (60) days~~ of the date on which the time to file the response expired, or as soon thereafter as is reasonably possible.

RULE 2223.0. Challenge _Disqualification Of Arbitrator(s).

Each party may disqualify one arbitrator without cause and shall have unlimited challenges for cause. Any disqualification or challenge of an arbitrator shall be ineffective unless made in writing and served on the State Bar within ~~fifteen (15) days~~ of the service of the "Notice of Assignment of Panel" or substitute arbitrator(s) if there is a disqualification or allowed successful challenge. An arbitrator who believes that ~~s/he~~ he or she cannot render a fair and impartial decision or who believes that there is an appearance that ~~s/he~~ he or she cannot render a fair and impartial decision, shall disqualify him/herself or shall accede to a reasonable party's

challenge for cause. If an arbitrator does not disqualify him/herself, the challenge shall be decided by the Presiding Arbitrator.

RULE ~~23~~ 24.0. Discharge Of Arbitrator Or Panel.

The Presiding Arbitrator shall have the authority to discharge an arbitrator or panel of arbitrators from further proceedings on a matter whenever the Presiding Arbitrator, in his/ or her sole discretion, determines that there has been an unreasonable delay in performing duties under these rules, or for other good cause shown.

RULE ~~24.50~~ Ex Parte Contacts With Arbitrators.

A party or an attorney or representative acting for a party shall not directly or indirectly communicate with ~~or argue to~~ an arbitrator regarding a matter pending before such arbitrator, except:

- a) At scheduled hearings; or
- b) In writing with a copy to all other parties, and their respective counsel, if any, and the State Bar; or
- c) For the sole purpose of scheduling a hearing date or other administrative procedures with notice of same to the other parties; or
- d) For the purpose of obtaining the issuance of a subpoena under rule 29; or
- e) In an emergency.

**ARTICLE VI.
THE HEARING**

RULE 25.0. Confidentiality.

25.1 All hearings shall be closed to the public. However, in the discretion of the hearing panel and in the absence of any objections by the parties, witnesses ~~and other such persons as may be necessary to the conduct of the hearing~~ may be present during the hearing.

25.2 The hearing panel, upon request of the client, shall permit the client to be accompanied by another person and may also permit additional persons to attend. Any such person shall be subject to the confidentiality of the arbitration proceedings.

25.3 The arbitration award is public; the arbitration case file, including the request, reply, exhibits and transcripts, remains confidential.

RULE 26.0. Waiver Of Personal Appearance.

26.1 Upon advance approval of the Panel Chair, ~~A~~ any party may waive personal appearance

and submit to the hearing panel testimony and exhibits by written declaration under penalty of perjury.

26.2 Any party unable to attend a hearing may designate a lawyer or non_lawyer representative.

26.3 Any party may request to appear by telephone, subject to the advance approval of the Panel Chair.

26.34 A request for waiver of appearance and/or designation of a representative and the submission of testimony by written declaration and/or request for telephonic appearance pursuant to this rule shall be filed with the ~~State Bar~~ Panel Chair at least ~~ten~~ (10) days prior to the hearing.

RULE 27.0. Death Or Incompetency Of a Party.

In the event of death or incompetency of a party, the personal representative of the deceased party or the guardian or conservator of the incompetent may be substituted.

RULE 28.0. Discovery.

No discovery is allowable except as specifically set forth in these rules.

RULE 29.0. Subpoenas.

The Panel Chair ~~shall, for good cause shown,~~ may issue subpoenas and/or subpoenas duces tecum at the request of a party. The State Bar shall mail ~~the~~ blank subpoenas to the requesting party who shall be responsible for obtaining the Panel Chair's signature and for service of the subpoenas. Any request for subpoenas must be received by the State Bar no later than ~~ten~~ (10) days before the scheduled hearing date. The party requesting subpoenas will be responsible for any witness fees and any costs of service of the subpoenas.

RULE 30.0. Commencement of Hearing; Notice; Attendance.

30.1 The hearing shall commence within ~~forty-five~~ 45 days for a single arbitrator panel and 90 ~~days for a three member panel~~ after the date of service of the "Notice of Assignment of Panel," ~~unless there has been a~~ A disqualification or allowed challenge of an assigned arbitrator will result, in which case there shall be a fifteen (15) day extension from the date of the assignment of replacement member(s). Upon stipulation or application to the Panel Chair, the matter may be ~~adjourned or~~ continued for good cause shown except in the instance where the ~~adjournment or~~ continuance is for ~~thirty~~ (30) days or more, in which case the ~~adjournment or~~ continuance must be decided by the Presiding Arbitrator.

30.2 The panel shall serve written notice of hearing on each party at the address ~~as shown~~ in the "Notice of Assignment of Panel" and the State Bar, within ~~fifteen~~ (15) days of its assignment and at least fifteen (15) days prior to the hearing date. Appearance by a party at a scheduled

hearing shall constitute waiver by said party of any deficiency with respect to the giving of "Notice of Hearing." Notwithstanding failure of either party to attend, the hearing shall proceed as scheduled and a decision made on the basis of evidence submitted.

30.3 An award shall not be made against a party solely because of the party's absence. The panel shall require the party who is present to submit such evidence as may be required to support the making of an award.

30.4 An award may be made in favor of a party who is absent if the evidence so warrants. If neither party appears and the panel chair has not approved waiver of personal appearance, the panel may terminate the arbitration by making an award that neither party is entitled to any relief.

30.5 If one of the panel members fails to appear, upon written stipulation of the parties, the hearing may proceed with the panel chair acting as the sole arbitrator. Under no circumstances will the hearing proceed with two ~~(2)~~ arbitrators or with one lay arbitrator.

RULE 31.0. Stipulations Encouraged.

Agreements between the parties as to issues not in dispute and the voluntary exchange of documents prior to the hearing ~~are~~ is encouraged.

RULE 32.0. Oaths.

All testimony shall be given under oath or affirmation ~~to be~~ administered by the Panel Chair.

RULE 33.0. Evidence.

Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule to the contrary.

Rule 33.5[new]:Clarification of Issues and Exchange of Documents

The Panel Chair may request that the parties clarify the issues, submit additional documentation, and exchange documents in advance of the hearing. The hearing panel may, in its discretion, decline to admit into evidence at the hearing a party's documents that were required to be exchanged in advance but were not.

RULE 34.0. Manner Of Proof.

The parties shall present their proof in a manner determined by the panel.

RULE 35.0. Interpreter.

Any party may provide for the attendance of a person to interpret at that party's expense.

RULE 36.0. Transcripts.

Any party may provide for the attendance of a certified shorthand reporter at that party's expense. Every party to the arbitration shall be entitled to a copy of said reporter's transcript of the testimony upon written request and payment of the expense thereof.

**ARTICLE VII.
AWARD**

RULE 37.0. Award.

37.1 The award shall be made within ~~fifteen~~ (15) days of the close of the hearing in any matter heard by a sole arbitrator and within ~~twenty-five~~ (25) days of the close of the hearing in any matter heard by a three (3) member panel.

37.2 The award shall be in writing. It shall include a determination of all questions submitted to the panel, the decision of which is necessary in order to determine the controversy, including the name of the responsible attorney(s). Arbitrators are encouraged, where appropriate, to ~~file~~ include findings of fact with their awards. ~~In the discretion of the arbitrators where appropriate,~~ the award may also include findings as to the willfulness of any party's non_attendance appearance at the hearing.

37.3 The award shall include substantially the following language, as appropriate:

The ~~arbitrators~~ Hearing Panel finds that the total amount of fees and/or costs ~~which~~ that should have been charged in this matter are:

\$ _____

Of which client is found to have paid:

\$ _____

In addition, the fee arbitration filing fee shall be allocated:

Client: \$ _____

Attorney: \$ _____

For a net amount of:

\$ _____

Accordingly, the following award is made:

a) Client, _____ (name) _____, shall pay attorney, _____ (name) _____: \$ _____

OR

b) Attorney, _____ (name) _____, shall pay client, _____ (name) _____: \$ _____

OR

c) Nothing further shall be paid by either attorney or client.

37.4 The award may include a refund ~~an award~~ of unearned fees and/or costs previously paid to the attorney.

37.5 Whenever there are three ~~(3)~~ arbitrators, a majority vote shall be sufficient for all decisions of the arbitrators, including the award. Any dissenting award shall be served with the award.

37.6 Evidence relating to claims of malpractice and professional misconduct, whether or not the client was actually harmed, shall be admissible, but only to the extent that those claims bear upon the fees and/or costs to which the attorney is entitled. The panel shall not award affirmative relief, in the form of damages or offset ~~or otherwise, therefor.~~

37.7 The award shall be signed by ~~the~~ all arbitrators concurring with it ~~therein~~.

37.8 The award may include an allocation of the filing fee; ~~and any fee paid by the client for filing a stay with the court~~, however, it shall not include an award for any other costs of the arbitration, including attorneys fees resulting from the arbitration proceeding.

37.9 The panel shall forward the original and four ~~(4)~~ copies of the signed award to the State Bar, which shall serve a copy of the award by mail on each party together with a ~~notice of post-arbitration rights~~ Notice of Rights After Arbitration form approved by the State Bar Board of Governors. The panel shall return all exhibits and documents to the parties who submitted them.

RULE 38.0. Correction Of Award By ~~Arbitrator(s)~~ Hearing Panel.

Rule 38.1: The ~~arbitrators~~ Hearing Panel may correct ~~the~~ a binding or non-binding award only on the grounds set forth in Code of Civil Procedure section 1286.6 (a) [evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award] and (c) [the award is imperfect in a matter of form, not affecting the merits of the controversy] under the procedures set forth in Code of Civil Procedure section 1284. An application for such a correction does not extend the deadline for seeking a civil trial after ~~an~~ a non-binding award is rendered, and ~~the~~ a non-binding award will automatically become binding ~~thirty (30) days after it is mailed to~~ served on the parties.

Rule 38.2: A party requesting correction or amendment under this rule must file a request in writing to the State Bar and serve a copy on the other party within ten (10) days after service of the award. Any party to the arbitration may make a written objection to such request.

Rule 38.3: The Hearing Panel shall either deny the application or correct the award in writing signed by the arbitrator(s) concurring therein. Any jurisdiction on the part of the Hearing Panel to amend or supplement an award expires upon entry of judgment.

ARTICLE VIII.
ENFORCEMENT OF THE ARBITRATION OR MEDIATION AWARD
BY THE STATE BAR

RULE 39.0. Purpose. Jurisdiction.

In any fee arbitration or fee mediation conducted by the State Bar or an approved mandatory fee arbitration program in which the client is awarded or owed a refund of previously paid fees and/or costs, the client may request State Bar assistance in enforcing the award or agreement if the attorney has not timely complied with that award or agreement as set forth below. This article shall apply to any fee arbitration or fee mediation in which a written request for enforcement of the award was received by the State Bar on or after January 1, 1994.

RULE 40.0. Request For Enforcement.

40.1 No less than ~~one hundred (100)~~ days or more than four ~~(4)~~ years after the service of a signed copy of the award in any arbitration conducted by the State Bar or State Bar approved mandatory fee arbitration program, or from the date of a final judgment, or the date of a signed agreement reached after mediation conducted under the mandatory fee arbitration program, the client may request that the State Bar enforce a final binding award or judgment that includes an award of previously paid fees and/or costs to that client. The request for enforcement shall be made on the approved State Bar form and may include all parties to the arbitration who were included in the original arbitration proceeding and who were awarded or liable for a refund of fees and/or costs. An arbitration award that awards only a full or partial reimbursement of the program filing fee to the client but no refund of attorney's fees or costs is not enforceable by the State Bar.

40.2 Prior to making ~~such a request for enforcement, however,~~ the client shall make reasonable efforts to contact the attorney to arrange for payment of the award, including, at a minimum, ~~mailing to the attorney~~ a written request to the attorney for payment. Proof of such ~~mailing~~ request may be required before the State Bar ~~initiates~~ files an enforcement proceeding in the State Bar Court against the attorney.

40.3 The client's request for enforcement of the arbitration award shall be served on the attorney by the State Bar.

40.4 [new] In the event that the client files a petition in the civil court to confirm an arbitration award, the State Bar may proceed with enforcement proceedings, or with the client's approval,

abate enforcement proceedings until a judgment confirming the award has been entered by the court.

RULE 41.0. Attorney's Response To Request For Enforcement.

41.1 Within ~~thirty (30)~~ days from the date of service on the attorney by the State Bar of the client's request for enforcement of the award, the attorney shall:

- a) Provide satisfactory proof to the State Bar that the award has been complied with; or
- b) Agree to a payment plan that is satisfactory to the client or the State Bar; or
- c) Provide reasons why, under Business and Professions Code section 6203(d)(2), the attorney should not comply with the award.

41.2 If no response is received, or the attorney has not provided a reason under Rule 41.1 why the award should not be enforced, the Presiding Arbitrator, ~~or designee~~, shall file a an Order re Administrative Penalties as provided for by Business and Professions Code section 6203(d)(5) and a motion with the State Bar Court to place the attorney on temporary inactive status.

41.3 [new] If no response from the attorney is received, or if the attorney initially responds but fails thereafter to cooperate with the State Bar's request for additional information, the Presiding Arbitrator may file an Order re Administrative Penalties prior to the filing of a motion seeking the attorney's involuntary inactive enrollment. Such order shall be final.

RULE 42.0. Payment Plans.

42.1 If the attorney has made a proposal for a payment plan to comply with the arbitration award, the State Bar shall immediately transmit the proposed plan to the client who may accept the proposal.

42.2 If the payment plan is not accepted by the client, the attorney is required to file a Financial Statement form with the State Bar in order that the Presiding Arbitrator, ~~or designee~~, may

- a) determine that the plan is reasonable and ~~may~~ approve the plan; or
- b) ~~may~~ order that the plan be rejected.

The Financial Statement Form is confidential and will not be copied by the State Bar to the client absent a showing of good cause. Good cause shall be determined by the Presiding Arbitrator.

42.3 If the payment plan is approved by the client or the State Bar, through the Presiding

Arbitrator, ~~or designee~~, the State Bar shall monitor the plan for compliance. If at any time the client advises the State Bar that the attorney has ceased to comply with the payment plan, and the attorney has not provided proof:

- a) of inability to pay the award under rule 43.1 below; or
- b) that the payment plan has been complied with,

the Presiding Arbitrator or designee shall file a motion with the State Bar Court to place the attorney on ~~temporary~~ involuntary inactive status.

42.4 Upon the submission of satisfactory proof that the payment plan has been completed and the award has been fully complied with, the State Bar shall close its file on the client's enforcement request and notify the parties of same.

RULE 43.0. Determination Of Attorney Responsibility/Inability To Pay.

43.1 If the attorney believes that he or she is no longer personally responsible for payment of the award due to a change in circumstances ~~since~~ following the arbitration hearing ~~or does not have the financial means to comply~~, the attorney shall provide reasons for this belief in the response to the client's request for assistance.

43.2 If the attorney provides the name(s) of the other attorney(s) he or she believes is now responsible for the award, the State Bar shall serve on that attorney copies of the client's request for assistance and the first attorney's response. The other attorney(s) shall have ~~twenty~~ (20) days from the date of service to respond.

43.3 An attorney who asserts that he or she is unable to pay the award must submit a Financial Statement Form to the State Bar. Any challenge by a party to the attorney's responsibility or claim of inability to pay the award shall be considered by the Presiding Arbitrator, or designee. The Presiding Arbitrator or designee may hold a hearing or may require the parties to submit additional information. The Financial Statement Form is confidential and will not be copied by the State Bar to the client absent a showing of good cause.

43.4 The Presiding Arbitrator, or designee, shall order either:

- a) That due to the attorney's inability to pay the award, the file shall be abated or closed; or
- b) That one or ~~all~~ more of the attorneys in the proceeding is responsible for the award; or
- c) That the attorney(s) can afford to comply with the award; or
- d) That the matter cannot be resolved under this article.

43.5 ~~Any challenge to the Presiding Arbitrator's order requiring the attorney(s) to pay the award shall be considered by the State Bar Court. Any Presiding Arbitrator order of the Presiding Arbitrator closing the file shall be final.~~

RULE 454.0. Administrative Penalties/Costs.

In any matter in which the attorney has failed to comply with a final, binding award, and has failed to submit a response to the Client's Request for Enforcement of an Arbitration Award, or if the attorney initially responds but fails thereafter to cooperate with the State Bar's request for additional information, the Presiding Arbitrator or designee may require the attorney to pay administrative penalties prior to the filing of a motion seeking the attorney's involuntary inactive enrollment. Penalties imposed shall not exceed ~~twenty percent (20%)~~ 20 percent of the amount awarded to the client or ~~one thousand dollars (\$1,000.00)~~, whichever is greater. Such order shall be final.

In the event that the attorney does not pay the administrative penalties, that amount shall be added to the State Bar membership fee dues of the attorney for the ~~next~~ following calendar year.

[NEW] Rule 44.5 RESCISSION OF ORDER IMPOSING ADMINISTRATIVE PENALTIES.

44.5 (a) Upon written request by the attorney, the Presiding Arbitrator may rescind or modify an order imposing administrative penalties under the following circumstances:

- _____ (1) the order was not received by the attorney when it was served;
- _____ (2) the attorney is willing to comply with the award; and
- _____ (3) the attorney sought rescission or modification of the order promptly upon first learning of the imposition of the administrative penalties.

_____ The foregoing facts must be set forth in one or more declarations, signed under penalty of perjury, and submitted with the written request for rescission or modification.

44.5 (b) The Presiding Arbitrator shall not rescind or modify an order imposing administrative penalties based on a request made more than 30 days following service of the order when the request is based on the attorney's failure to maintain a current official membership address with the State Bar.

44.5 (c) In making the determination of the attorney's request for rescission or modification, the Presiding Arbitrator may require the attorney to furnish, within time limits set by the Presiding Arbitrator, additional information or declarations before ruling on the request. Such additional information or declarations shall be provided within the time limits set by the Presiding

Arbitrator, and the failure to do so shall be grounds for the denial of the request.

44.5(d) The decision of the Presiding Arbitrator whether to rescind or modify an order imposing administrative penalties is final.

RULE 44.0. Motion To The State Bar Court To Place Attorney On Inactive Status.

In any matter in which the Presiding Arbitrator, ~~or designee~~, determines that the attorney has not

- a) agreed to a payment plan or;
- b) proven an inability to pay the award;
- c) proven that he or she is not personally responsible for the award; or
- d) proven that he or she has complied with the payment plan,

the Presiding Arbitrator or designee may petition the State Bar Court to place the attorney on ~~temporary~~ involuntary inactive status. Such proceedings shall be governed by “The Rules of Procedure ~~for~~ of the State Bar Court Proceedings of California.”

**ARTICLE IX.
SERVICE; ADDRESS**

RULE 46.0. Service.

46.1 Unless otherwise specifically stated in these rules, service on the client shall be by personal delivery, by deposit in the United States mail, or by deposit in a business facility used for collection and processing of correspondence for mailing with the United States Postal Service pursuant to Code of Civil Procedure section 1013(a)(3), postage paid, addressed to the person on whom it is to be served, at his or her address as last given, on any document which has been filed in the arbitration. The client shall keep the State Bar advised of his/ or her current address.

46.2 Unless otherwise specifically stated in these rules, service on an individual attorney shall be at the latest address shown on the official membership records of the State Bar. ~~If the fee dispute is with a law firm, service shall be on the address as shown in the request for arbitration form unless the law firm designates an attorney to be responsible for the arbitration, then service shall be on the designee's address shown on the official membership records of the State Bar.~~ Service shall be in accordance with subsection 46.1 above.

46.3 If either party is represented by counsel, service shall be on the party as indicated in subsections 46.1 and 46.2 of this rule, and on the counsel at the latest address shown on the official membership records of the State Bar.

46.4 The service is complete at the time of deposit. The time for performing any act shall commence on the date service is complete and shall not be extended by reason of service by mail.

46.5 Where a facsimile transmission (~~“fax”~~) is used to communicate with the State Bar or to file any document, it will not be considered received unless the State Bar also receives within five (~~5~~) days of the date of the transmission, the original of the faxed document.

46.6 In the event that the client fails to keep the State Bar advised of his or her current address, the State Bar may close the arbitration request, if it is made by the client, or enforcement request, after 30 days from the date that the State Bar learns of the invalid address.

RULE 47.0. State Bar.

Whenever these rules indicate that a copy of any form or other matter be sent to the State Bar, the item should be addressed as follows:

**State Bar of California
Mandatory Fee Arbitration Program
180 Howard Street, 6th Floor
San Francisco, CA 94105-1639**